

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOHN ZIELINSKI, JR.,

Plaintiff,

v.

FRONTIERLAND COMMUNICATIONS, et
al.,

Defendants.

Case No. 3:12-cv-00127-MMD-WGC

ORDER

On March 7, 2012, Plaintiff filed an incomplete application to proceed *in forma pauperis* (dkt. no. 1) and civil rights complaint (dkt. no. 1-1.) The Court issued an order on August 9, 2013, directing Plaintiff to file a complete application or pay the filing fee (“the Order”) (dkt. no. 6.) The Court provided Plaintiffs with thirty (30) days to comply.

The thirty-day period has expired, and Plaintiff has not paid the filing fee, filed a fully completed application to proceed *in forma pauperis*, or otherwise responded to the Court’s Order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)

1 the public policy favoring disposition of cases on their merits; and (5) the availability of
2 less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24;
3 *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

4 In the instant case, the Court finds that the first two factors, the public's interest in
5 expeditiously resolving this litigation and the Court's interest in managing the docket,
6 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
7 in favor of dismissal, since a presumption of injury arises from the occurrence of
8 unreasonable delay in filing a pleading ordered by the court or prosecuting an action.
9 See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public
10 policy favoring disposition of cases on their merits — is greatly outweighed by the factors
11 in favor of dismissal discussed herein. Finally, a court's warning to a party that his
12 failure to obey the court's order will result in dismissal satisfies the "consideration of
13 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33;
14 *Henderson*, 779 F.2d at 1424.

15 The Court's Order expressly stated: "In order to maintain this action, Plaintiff will
16 either need to pay the \$400 filing fee or submit a renewed and completed application to
17 proceed in forma pauperis that is signed and demonstrates, with particularity, his
18 inability to pay the filing fee within **THIRTY DAYS OF THE DATE OF THIS ORDER.**
19 Plaintiff is cautioned that a failure to pay the filing fee or submit a renewed application to
20 proceed in forma pauperis will result in dismissal of this action." (Dkt. no. 6 at 2.) Thus,
21 Plaintiff had adequate warning that dismissal would result from his noncompliance with
22 the Court's Order to pay the filing fee or file a renewed and complaint application to
23 proceed *in forma pauperis* within thirty (30) days.

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1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to pay the filing fee or file a renewed and complete application to
3 proceed *in forma pauperis* in compliance with this Court's August 9, 2013, Order.

4 DATED THIS 7th day of November 2014.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE